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IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

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No. 977

ANNA LALOR BURDICK, THOMAS JEFFERSON LALOR, CHARLES LALOR BURDICK, THOMAS MORTON LALOR, MARGARET LALOR CARY, RUTH LALOR OLSON, AND ESTHER LALOR GUTH, *Petitioners*,

v.

CHARLES LALOR BURDICK AND CHEMICAL BANK & TRUST COMPANY, *Trustees, et al.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA, AND BRIEF IN SUPPORT THEREOF.

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Of Counsel.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX.

Subject Page

PETITION.

STATEMENT OF THE MATTER INVOLVED..... 1
QUESTION PRESENTED 2
STATEMENT OF JURISDICTION 2
REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT 2

BRIEF.

OPINION BELOW 5
JURISDICTION 5
QUESTION PRESENTED 6
STATEMENT OF THE CASE 6
SPECIFICATION OF ERRORS 7
ARGUMENT
A. The Controlling Law 8
B. The Thellusson Case 8
C. Contention of Petitioners 11
D. Opinion of the Court of Appeals..... 16
E. Questions of General Importance..... 22

CITATIONS.

CASES:

Bankers Trust Company v. Moy, 265 N. Y. S. 77.... 12
Dimick v. Schiedt, 293 U. S. 474, 496 21
Fitchie v. Brown, 211 U. S. 321 .....17, 19, 20
Flaudermeyer v. Cooper, 85 Ohio St. 327; 98 N. E. 102 22
Funk v. U. S., 290 U. S. 371 .....3, 18, 19, 22
Goldtree v. Thompson, 179 Cal. 613; 22 P. 50..... 12
Hurtado v. California, 110 U. S. 516, 530 21
In Re McLaughlin's Estate, 299 N. Y. S. 559..... 12

Page

Katz v. Walkinshaw, 141 Calif. 116; 70 P. 663; 74 P. 766 22
KVOS v. Assoc. Press, 299 U. S. 269..... 20
Matter of Rogers, 48 N. Y. S. 175, 177; 161 N. Y. 108. 12
Moeller v. Kautz, 112 Conn. 481; 152 Atl. 886.....17, 20
Porter v. Union Trust Co., 182 Ind. 637, 645; 108 N. E. 117 12
State Bank & Trust Company v. Foss, 257 Ill. App. 435; 175 N. E. 12 12
The Duke Norfolk's Case, 3 Chan. Cases 1, etc. 21
Woodford v. Thellusson, 4 Ves. 227, etc. 8, 9, 10
Wright v. U. S., 302 U. S. 583.....17, 18

TEXTS AND ARTICLES:

Bogert on Trusts (Vol. 1) 12, 18
Campbell's "Lives of the Lord Chancellors", Vol. VII 22
Foulke on Rules against Perpetuities 12
History of the English Law, Holdsworth's Vol. VII. 12, 13
Kent's Commentaries, Vol. 4 11
Law of Trusts, Scott, Vol. 1..... 13
Perpetuities, Gray 18
The Growth of the Law, Cardozo 21
The Path of the Law, Collected Papers..... 19
Treatise on the Thellusson Case, Hargrave.....9, 10
Simes, Statutory Restrictions on Accumulation of Income 13

STATUTES:

General Laws of Hawaii, Ch. 1, Sec. 1..... 20

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CHARLES LALOR BURDICK AND CHEMICAL BANK & TRUST COMPANY, *Trustees, et al.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

PETITION.

May It Please the Court: The petition of Anna Lalor Burdick, et al., respectfully shows to this Honorable Court:

Statement of the Matter Involved.

Willard Lalor died testate in the District of Columbia on October 9, 1934, leaving an estate, after taxes, of about $2,000,000, most of which he had inherited from his brother, John Lalor (R. 3, 68, 73, 75). By his Will, Willard Lalor provided that the income of his estate, over and above small annual payments to several kinsfolk, should be accumulated

until twenty-one years after the death of the survivor of his two nieces, Esther and Ruth. Thereupon, the accumulated income and the principal is to be divided among the lawful issue of five nieces and nephews (R. 15).

The Trustees of the Lalor Trust brought action to construe the Will, asking, among other things, whether the clause requiring the accumulation of income is valid. Petitioners, named as defendants, and the Guardian ad litem appointed in the proceeding for minor and unborn beneficiaries and remainderman, joined in the prayers for construction of the Will.

The District Court held the accumulation clause invalid, (R. 80, 107; 33 Fed. Supp. 921). On appeal, the United States Court of Appeals for the District of Columbia reversed the judgment of the District Court and held the clause valid (R. 136; 123 Fed. (2) 924).

Question Presented.

The only question is whether the clause in the Will of Willard Lalor, which directs the accumulation of the surplus income of his estate for the period of two lives in being plus twenty-one years, is valid. The question is one of current common law, there being no statute on the subject in the District of Columbia.

Statement of Jurisdiction.

The judgment in question was entered by the United States Court of Appeals for the District of Columbia on November 26, 1941 (R. 136; 123 Fed. (2) 924). This Court has jurisdiction to review the judgment under Section 240(a) of the Act of February 13, 1925, 43 Stat. 936.

Reasons Relied on for the Allowance of the Writ.

1. The United States Court of Appeals for the District of Columbia, in this case, has decided a question of general importance in holding that the common law and public policy of today support a testamentary direction for the accu-

mulation of the income of the decedent's estate over a period of lives in being plus twenty-one years. The District Court properly held the accumulation clause to be violative of established public policy, repugnant to our institutions and conditions, inconsistent with the principles of a democracy, and invalid under the common law of our time. The Court of Appeals reversed. The decision in this case is the first decision directly on the point in this country. It would not only establish for the first time the law on the subject in the District of Columbia, but would also be a persuasive initial precedent in every State in which the common law prevails, there being 35 states with no statute on accumulations.

2. The United States Court of Appeals for the District of Columbia has not given proper effect to an applicable decision of this Court, but it has applied the narrow, legalistic principles enunciated by an English court in 1799—principles which, even at that time, were in conflict with public policy. This Court, in *Funk* v. *United States*, 290 U. S. 371, held it to be the duty of a court, where Congress has failed to act, to decide a question relating to rules of common law in accordance with present-day standards of wisdom and justice rather than in accordance with some outworn and antiquated rule of the past.

3. The United States Court of Appeals for the District has not given proper effect to applicable decisions of this Court, in that it held (a) that in a case of first impression as to which the legislative body has better facilities for the study of related problems (R. 154), a court must hold a will valid; (b) that a general assumption in judicial dicta, although without a decision in point, constitutes a "tenor of case law" which amounts to a precedent; and (c) that where a court is unable to prescribe the standards for a valid will, it should not hold invalid a specific will involved in a case before it. Contra, see *Funk* v. *U. S.*, *supra; Wright* v. *U. S.*, 302 U. S. 583, and other cases cited in our brief.

Wherefore, your petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Court, directed to the United States Court of Appeals for the District of Columbia, commanding that court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the cases numbered and entitled on its docket, No. 7773, George C. Gertman, et al., vs. Charles Lalor Burdick, et al., and No. 7775, Charles Lalor Burdick, et al., vs. Anna Lalor Burdick, et al., and that the said judgment of the United States Court of Appeals for the District of Columbia may be reversed by this Court, and that your petitioners may have such other and further relief in the premises as to this Court may seem meet and just; and your petitioners will ever pray.

ANNA LALOR BURDICK, ET AL.
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